

#### § 34.41

a Conciliation Agreement has been entered into, prior to approving the award of further assistance under JTPA. If a grant applicant refuses or fails to take remedial or corrective actions or to enter into a Conciliation Agreement, as applicable, the Director shall follow the procedures outlined in § 34.46.

(4) The Director shall notify, in a timely manner, the departmental granting agency of the findings of the pre-approval compliance review.

(c) *Post-approval reviews.* (1) The Director may initiate a post-approval review of any recipient to determine compliance with the nondiscrimination and equal opportunity provisions of JTPA and this part. The initiation of a review may be based on, but need not be limited to, the following: The results of routine program monitoring, the nature of or incidence of complaints, the date of the last review, and Congressional or community concerns.

(2) Such review shall be initiated by a Notification Letter, advising the recipient of:

- (i) The practices to be reviewed;
- (ii) The programs to be reviewed;
- (iii) The data to be submitted by the recipient within 30 days of the receipt of the Notification Letter; and
- (iv) The opportunity, at any time prior to receipt of the Final Determination described in § 34.46, to make a documentary or other submission which explains, validates or otherwise addresses the practices under review.

(3) Except as provided in § 34.41(e), within 210 days of issuing a Notification Letter initiating a review, the Director shall:

(i) Issue a Letter of Findings, which shall advise the recipient, in writing, of:

(A) The preliminary findings of the review;

(B) Where appropriate, the proposed remedial or corrective action to be taken, and the time by which such action should be completed, as provided in § 34.44;

(C) Whether it will be necessary for the recipient to enter into a written assurance and/or Conciliation Agreement, as provided in § 34.45; and

(D) The opportunity to engage in voluntary compliance negotiations.

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(ii) Where no violation is found, the recipient shall be so informed in writing.

(4) The time limit for submitting data to the Director pursuant to paragraph (c)(2)(iii) of this section may be modified by the Director.

#### § 34.41 Notice to Show Cause.

(a) The Director may issue a Notice to Show Cause to a recipient failing to comply with the requirements of this part, where such failure results in the inability of the Director to make a finding. Such a failure includes, but is not limited to, the failure or refusal to:

(1) Submit requested data within 30 days of the receipt of the Notification Letter;

(2) Submit documentation requested during a compliance review; or

(3) Provide the Directorate access to a recipient's premises or records during a compliance review.

(b) The Notice to Show Cause shall contain:

(1) A description of the violation and a citation to the pertinent nondiscrimination or equal opportunity provision(s) of JTPA and this part;

(2) The corrective action necessary to achieve compliance or, as may be appropriate, the concepts and principles of acceptable corrective or remedial action and the results anticipated; and

(3) A request for a written response to the findings, including commitments to corrective action or the presentation of opposing facts and evidence.

(c) Such Notice to Show Cause shall give the recipient 30 days to show cause why enforcement proceedings under the nondiscrimination and equal opportunity provisions of JTPA or this part should not be instituted. A recipient may make such a showing by, among other means:

(1) Correcting the violation(s) that brought about the Notice to Show Cause and entering into a written assurance and/or entering into a Conciliation Agreement, as appropriate, pursuant to § 34.45(d);

(2) Demonstrating that the Directorate does not have jurisdiction; or

(3) Demonstrating that the violation alleged by the Directorate did not occur.

(d) If the recipient fails to show cause why enforcement proceedings should not be initiated, the Director shall follow the procedures outlined in § 34.46.

(e) The 210 day requirement provided for in § 34.40(c)(3) shall be tolled during the pendency of a Notice to Show Cause.

**§ 34.42 Adoption of discrimination complaint processing procedures.**

(a) Each recipient shall adopt and publish procedures for processing complaints that allege a violation of the nondiscrimination and equal opportunity provisions of JTPA or this part. The procedures shall provide for the prompt and equitable resolution of such complaints. In the case of service providers, the procedures required by this paragraph shall be adopted and published on behalf of the service provider by the Governor, the SDA grant recipient or the Substate grantee, as provided in the State's Methods of Administration.

(b) The recipient's Equal Opportunity Officer, or in the case of a small recipient, the person designated pursuant to § 34.22(c), shall be responsible for the adoption and publication of procedures pursuant to paragraph (a) of this section, and for ensuring that such procedures are followed.

(c) A recipient who processes a complaint alleging a violation of the nondiscrimination and equal opportunity provisions of JTPA or this part shall provide the complainant with written notification of the resolution within 60 days of the filing of the complaint. Such notification shall include a statement of complainant's right to file a complaint with the Director.

**§ 34.43 Complaints and investigations.**

(a) *Who may file.* Any person who believes that he or she or any specific class of individuals has been or is being subjected to discrimination prohibited by the nondiscrimination and equal opportunity provisions of JTPA or this part may file a written complaint by him or herself or by a representative.

(b) *Where to file.* The complaint may be filed either with the recipient or with the Director.

(c) *Time for filing.* A complaint filed pursuant to this part must be filed

within 180 days of the alleged discrimination. The Director, for good cause shown, may extend the filing time. This time period for filing is for the administrative convenience of the Directorate and does not create a defense for the respondent.

(d) *Contents of complaints.* Each complaint shall be filed in writing and shall:

(1) Be signed by the complainant or his or her authorized representative;

(2) Contain the complainant's name and address (or specify another means of contacting him or her);

(3) Identify the respondent; and

(4) Describe the complainant's allegations in sufficient detail to allow the Director or the recipient, as applicable, to determine whether:

(i) The Directorate or the recipient, as applicable, has jurisdiction over the complaint;

(ii) The complaint was timely filed; and

(iii) The complaint has apparent merit, i.e., whether the allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions of JTPA or this part. The information required by this paragraph may be provided by completing and submitting the Directorate's Complaint Information and Privacy Act Consent Forms.

(e) *Right to Representation.* Each complainant and respondent has the right to be represented by an attorney or other individual of his or her own choice.

(f) *Election of recipient-level complaint processing.* Any person who elects to file his or her complaint with the recipient shall allow the recipient 60 days to process the complaint.

(1) If, during the 60-day period, the recipient offers the complainant a resolution of the complaint but the resolution offered is not satisfactory to the complainant, the complainant or his or her representative may file a complaint with the Director within 30 days after the recipient notifies the complainant of its proposed resolution.

(2) Within 60 days, the recipient shall offer a resolution of the complaint to the complainant, and shall notify the complainant of his or her right to file